

**Before the Federal Election Commission**

RECEIVED  
FEC MAIL CENTER

2017 MAR 23 PM 2:21

Project Veritas Action Fund  
1214 E Boston Post Rd.  
Mamaroneck, NY 10543

James O'Keefe III  
1214 E Boston Post Rd.  
Mamaroneck, NY 10543

v.

**MUR # 7157**

*Suppl Compl*

Hillary for America,  
Jose H. Villareal, Treasurer  
P.O. Box 5256  
New York, NY 10185-5256

Democratic National Committee  
430 S. Capitol St. SE  
Washington, DC 20003

Democracy Partners  
1250 Eye St. NW #250  
Washington, DC 20005

Scott Foval  
d/b/a The Foval Group

Sun Prairie, WI 53590

Priorities USA Action  
1101 15th St. NW  
Washington, DC 20005

Alliance for Retired Americans  
815 16th St. NW, Fourth Floor  
Washington, DC 20006

Americans United for Change  
P.O. Box 34606  
Washington, DC 20043

OFFICE OF GENERAL  
COUNSEL

2017 MAR 24 AM 6:24

RECEIVED  
FEDERAL ELECTION  
COMMISSION

### **Supplementary Filing to Complaint**

1. On October 19, 2016, Project Veritas Action Fund ("PVA") filed a complaint with the Federal Election Commission ("FEC") detailing violations of the Federal Election Campaign Act ("FECA") by the above-named respondents.
2. This filing provides supplementary information detailing the legal basis supporting a reason to believe a violation of the law occurred due to the creation of regulated public communications by respondents that evaded FECA requirements.<sup>1</sup>

### **Key Facts Relevant to This Matter**

3. Before the Commission is evidence gathered during an investigation carried out by PVA. During that investigation, PVA learned that the above-named respondents designed an elaborate public messaging campaign designed to influence federal elections in 2016 while evading the requirements of the FECA.
4. In this scheme, PVA discovered that Democracy Partners acted as a private hub between Hillary for America as well as the Democratic National Committee to be able to control messaging and approve tactics used by a variety of supposedly independent third-party groups.
5. Particularly problematic is the fact that Americans United for Change, a non-profit corporation registered under Section 501(c)(4) of the IRS Code, colluded with Democracy Partners to evade key provisions of the FECA—most importantly, coordination provisions.

---

<sup>1</sup> On February 10, 2017, Commissioner Ellen L. Weintraub issued a statement concerning her personal distress over statements by President Trump related to voting irregularities in the 2016 election cycle. This supplemental filing will hopefully address Commissioner Weintraub's concerns and give her sufficient reason to believe a reason to believe that a violation of the FECA has occurred here.

In doing so, because it is a non-profit corporation, it also violated contribution source prohibitions in the FECA.

6. Although the facts uncovered in PVA's investigation are novel—Donald Duck outfits, paid protestors,<sup>2</sup> and political “birddogging”—they establish ample reason to believe violations of FECA occurred, particularly in light of previous FEC enforcement matters. As will be demonstrated, just like other political actors in past campaigns, colluding to coordinate public messaging to influence an election while evading FECA requirements is unmistakably against the law.

**Key Legal Terms and Enforcement Actions Central to Resolving This Matter**

7. This complaint focuses on Respondents' failure to abide by requirements of FECA in sponsoring and carrying out a public communications campaign designed to influence the 2016 presidential election. Respondents produced public communications that failed to comply with federal disclosure, disclaimer, and registration requirements, and which did not follow source restrictions and coordination rules. *See, e.g.*, 11 CFR 109.20(a), (b); 11 CFR 109.21; 11 CFR 114.2.
8. 11 CFR 100.26 defines a “public communication” as a “communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term general public political advertising shall not include

---

<sup>2</sup> It remains popular to chastise the notion of “paid protestors” during the 2016 election cycle given the variety of unverified news about this topic. However, PVA obtained evidence that Americans United for Change had already engaged in paid protests “targeted at Trump/Pence/Johnson/Sensenbrenner/Ryan to ‘wake up’ the latino electorate as to why they should vote against these candidates.” PVA Compl, Exh. C.

communications over the Internet, except for communications placed for a fee on another person's Web." (Emphasis added).

9. "Public communications" may constitute regulated expenditures under the FECA, thus triggering registration and reporting requirements as well as compliance with anti-coordination provisions. *See, e.g.*, 11 CFR 109.21; 109.37.
10. When an individual or group pays for a communication that is coordinated with a candidate or party committee, the communication is considered an in-kind contribution to that candidate or party committee and is subject to the limits, prohibitions and reporting requirements of FECA.
11. To establish that communications are coordinated, the FEC applies a three-prong test.
12. Under the first prong (payment), a communication is paid for, in whole or in part, by someone other than a candidate, a candidate's authorized committee, political party committee, or agent of any of the above.
13. Under the second prong (content), a communication meets any one of these four standards:
  - a. A public communication that expressly advocates the election or defeat of a clearly identified candidate;
  - b. A communication that is an electioneering communication as defined in 11 CFR 100.29;
  - c. A public communication that republishes, disseminates or distributes in whole or in part campaign materials prepared by a candidate or a candidate's campaign committee; or
  - d. A public communication that is:
    - i. Made within 90 days before an election and:

1. Refers to a clearly identified House or Senate candidate and is publicly distributed in that candidate's jurisdiction; or
  2. Refers to a political party, is coordinated with a House or Senate candidate, and is publicly distributed in that candidate's jurisdiction; or
  3. Refers to a political party, is coordinated with a political party, and is publicly distributed during a midterm election cycle
- ii. Made 120 days before a presidential primary election through the general election and:
1. Refers to a clearly identified presidential or vice-presidential candidate and is publicly distributed in a jurisdiction before the clearly identified federal candidate's election in that jurisdiction; or
  2. Refers to a party, is coordinated with a presidential or vice-presidential candidate, and is publicly distributed in that candidate's jurisdiction; or
  3. Refers to a political party, is coordinated with a political party, and is publicly distributed during the presidential election cycle.

e. Under the third prong (conduct), a communication satisfies this part of the test if it meets any one of the five standards:

- i. If the communication is created, produced or distributed at the request or suggestion of the candidate, candidate's committee, a party committee or agents of the above; or the communication is created, produced or distributed at the suggestion of the person paying for the communication

and the candidate, authorized committee, political party committee or agent of any of the foregoing assents to the suggestion.

- ii. If the candidate, the candidate's authorized committee or party committee is materially involved in decisions regarding the content, intended audience, means or mode of the communication, specific media outlet used, the timing or frequency or size or prominence of a communication.
- iii. If the communication is created, produced or distributed after one or more substantial discussions about the communication between the person paying for the communication or the employees or agents of that person and the candidate, the candidate's committee, the candidate's opponent or opponent's committee, a political party committee or agents of the above.
- iv. If the person paying for the communication employs a common vendor to create, produce or distribute the communication, and that vendor:
  - 1. Is currently providing services or provided services within the previous 120 days with the candidate or party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee; and
  - 2. Uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that information is material to the creation, production or distribution of the communication.

- v. If a person who has previously been an employee or independent contractor of a candidate's campaign committee or a party committee during the previous 120 days uses or conveys information about the plans or needs of the candidate or political party committee to the person paying for the communication, and that information is material to the creation, production or distribution of the communication.

**Public Communications Designed to Influence an Election are Regulated Under the FECA**

14. For the activity uncovered by PVA to constitute violations of the FECA, the activities must constitute public communications designed to influence the 2016 election cycle. Importantly, as per the regulation itself and related enforcement actions, any "form of general public political advertising" constitutes a public communication. 11 CFR 100.26.
15. On September 15, 2015, the FEC reached a Conciliation Agreement with Murray Energy Corporation in MUR 6659. There, the Commission explained that signs may constitute "public communications" subject to regulation under the FECA when they include "campaign slogans" or "individual words that in context can have no other reasonable meaning than to urge the defeat of a clearly identified federal candidate". Because Murray Energy purchased and placed signs reading "STOP the WAR on COAL—FIRE OBAMA," without complying with the FECA, it violated the law. The Commission issued a fine of \$5,000 as a penalty.
16. On February 28, 2007, the FEC announced its settlement with the Progress for America Voter Fund ("PAVF") to the amount of \$750,000. Due to PAVF running "public communications" designed to "influence an election," it violated the law by not registering with the Commission. See MUR 5487 (PAVF) Factual and Legal Analysis at 2, 5-7 (Nov.

29, 2004) (noting advertisement that referenced John Kerry and read, in part, "If found, do not return to public office" triggered regulation requirements under the FECA).

17. On November 19, 2007, the FEC announced its settlement with The Media Fund to the amount of \$580,000. Because The Media Fund published "public communications," such as "George Bush's priorities are eroding the American dream", this required the group to register and not coordinate these efforts with federal candidates or parties. *See* MUR 5440 (Media Fund) Factual and Legal Analysis at 3-6 (Dec. 22, 2004).

18. On July 27, 2009, Vice Chairman Petersen and Commissioners Bauerly, Hunter, and McGahn issued a Statement of Reasons in MUR 5575 (Alaska Democratic Party). There, the Commissioners explained why they voted against adopting the Office of General Counsel's recommendations to find reason to believe a violation of the FECA occurred. The Commissioners determined that there was a lack of sufficient evidence that funds transferred by the Democratic Senatorial Campaign Committee to the Alaska Democratic Party were paid to fund volunteer activities. The Commissioners found it important to note that had the "investigation revealed an agreement about how the funds would be used, or some other evidence to show that the funds were donated specifically to pay for volunteer exempt activity, the outcome of this case may have been different." *Id.* at 4. Thus, when funds are paid specifically for volunteer activity or public messaging, it may constitute regulated or prohibited activity.

**Public Communications Qualifying as Expenditures may not be Coordinated**

19. The FEC treats violations of its anti-coordination provisions seriously. In 2015, Tyler Harber pled guilty to violating these rules due to his coordination of Super PAC advertisements with a congressional candidate. *See* "Campaign Manager Sentenced to 24



Months for Coordinated Campaign Contributions and False Statements,” Department of Justice, June 12, 2015, *available at* <https://www.justice.gov/opa/pr/campaign-manager-sentenced-24-months-coordinated-campaign-contributions-and-false-statements>. Harber, working in tandem with a federal candidate committee, coordinated some \$325,000 worth of advertisements to oppose that candidate’s rival.

20. Likewise, on April 8, 2009, in MUR 5887, the Commission entered into a conciliation agreement with Republican Main Street Partnership PAC for violations of coordination rules. There, the Commission examined promises made between the Republican Main Street Partnership PAC and Congressman Schwarz concerning how the PAC would deliver television advertisements as well as many discussions about the content (substance, timing) of the communications that were material to their creation. Based on these facts, the PAC entered into a conciliation agreement due to violations of the FEC’s coordination standards.

**The Submitted Complaint Demonstrates Violations of the FECA**

21. **The Respondents’ Actions Satisfy the Coordination Content Prong.** Americans United for Change negotiated the “move” of a public communications campaign centering around “Donald Ducks his Taxes” from the Democratic National Committee to the AUFC. PVA Compl. at ¶21. This public communications campaign included the use of “Donald Duck” costumes, electoral signs, and paid third-party protestors using cellular phones to emit duck call sounds. *Id.* at ¶21(a)(ii). This is directly admitted to by Scott Foval of the AUFC. *Id.* at ¶21(a)(i). Just as in MUR 6659 (Murray Energy), the use of signs influencing the 2016 elections and Donald Duck costumes depicting presidential candidate Donald Trump constitute public communications that occurred within 120 days of a federal election. As such, they meet the content prong of the coordinated communications standard.

180442404-5-1405242081

**22. The Respondents' Actions Satisfy the Coordination Conduct Prong.** Before progressing with more radical public communication campaigns, AUFC sought approval from the DNC to insert an "extremist message." *Id.* at ¶21(b)(i). Also, Scott Foval explained that all the partner organizations involved in this public communications campaign received a "clip deliverable" to determine shared messaging. *Id.* at ¶21(b)(iv). This "clip deliverable" was distributed to Alliance for Change, Alliance for Retired Americans, the DNC, and Priorities USA Action. *Id.* Under the conduct prong, communications requested or suggested by a candidate or party committee or assented to meet this prong. Similarly, material involvement by a candidate or party committee in decisions about "means or mode of the communication" meet this prong. Like MUR 5887 (Republican Main Street Partnership), requiring pre-approval and input as well as fostering material involvement by a national party committee for non-profits and PACs to run public communications satisfies the conduct prong.

**23. The Respondents' Actions Satisfy the Coordination Payment Prong.** It is apparent based on the facts uncovered in PVA's investigation that AUFC made payments to protestors to appear at rallies, created and distributed signs designed to influence elections, and otherwise synchronized that messaging with other political actors, including Hillary for America and the DNC. This included signs featuring language like "#DumpTrump" or "Make misogyny great again." *Id.* at 21(b)(ii)-(iii). It is also apparent that through the Voces De La Frontera program that the respondents had engaged in and would engage in "Confrontations: Special Forces" which involved "getting confrontations with Pence/Trump/and key staff and some of his children." *Id.* at Exh. C. Likewise, the included proposal found in Exhibit C also details a scheme to pay protestors to target

“Trump/Pence/Johnson/Senesenbrenner/Ryan to ‘wake up’ the latino electorate as to why they should vote against these candidates.” *Id.* The proposed cost of actions designed to influence the 2016 election by focusing on battleground states and key electoral demographics, as listed in the proposal found in Exhibit C was \$45,000.00. *Id.* Under the payment prong, communications need only be paid for, even in part, by someone other than a candidate or party committee. Because AUFC and Democracy Partners sought payment by third parties of communications that would meet the other two prongs of the coordinated communications standards, the payment prong is satisfied.

24. Further evidence obtained in PVA’s investigation illustrates that the respondents’ activities violated the payment prong of the FEC’s coordination rules. When discussing how AUFC can make people appear to protest at events or distribute public communication campaigns, Scott Foval noted, “But what they will not do, is do that unless someone is paying them on the project. Because there’s staff time involved, there’s transportation involved, there’s food, lodging training, whatever, involved.” *Id.* at ¶26(a). Mr. Foval also suggested “paying people to relocate to the state of Wisconsin in order to vote, we’re literally just running out of time for them to, you know, register to vote.” *Id.* at 26(b).
25. Lastly, PVA’s investigation illustrated through recorded material and e-mailed budgets how third parties would make joint payments into AUFC and Democracy Partners to enable their public communications campaign. *Id.* at 26(c). Indeed, Exhibit D to the Complaint—a promotional pitch by AUFC—illustrated how it would “hold Donald Trump and Republicans accountable,” operate in five battleground states (Nevada, Florida, Wisconsin, Pennsylvania, and Ohio), and develop a “rapid response operation to hold Republicans accountable....” Programs delivered by Voces De La Frontera Action would cost some

18044104-1

\$180,000 for activities like “phone banking, robo calls, and targeted radio and television advertisements. *Id.*, Exh. D. Programs delivered by AUFC and Frontera would cost some \$425,000 which involved activities like “Voter Mobilization Operation,” “signs, collateral, and event costs,” and a nationwide busing program. *Id.* Where third parties pay for coordinated communications, the payment prong of the FEC’s coordination rules is met.

**26. Respondents’ Actions Constitute Violations of Source Prohibitions and Other**

**Requirements.** Under the FECA, corporations are prohibited from making contributions to influence federal elections. 11 CFR 114.2(a). Because several of the respondents are incorporated 501(c)(4) organizations, their coordinated communications would constitute in-kind contributions to the DNC or Hillary for America in violation of the law. Additionally, the use of signs and other communications to influence the 2016 elections would have required compliance with reporting requirements since coordinated communications to a candidate or party committee constitute reportable expenditures by the candidate or party committee—here the DNC or Hillary for America. *See, e.g.*, 11 CFR 109.21(b)(1); 11 CFR 104.13.

**27. Respondents’ Actions Were Done Knowingly and Already Underway.** Notably, AUFC

and Voces De La Frontera Action indicated that paid protests and a public communications campaign designed to drive the Latino electorate away from Trump “have already been put in motion this cycle.” See Exh. C (e-mail from Scott Foval detailing actions of AUFC and Voces De La Frontera) (emphasis added). Thus, besides conspiring to violate the FECA, respondents had already done so based on their own description of their activities in Exhibit C. The transcript and recordings in the PVA investigation also illustrate that Democracy Partners and Scott Foval acted knowingly to evade coordination rules to accomplish their

management and deployment of their public communications campaign. *See id.* at 21(b)(v) (“private firms, we can do whatever we want, we don’t have to disclose it”).

**28. The Evidence Collected Demonstrates That an Investigation is Warranted.** Through months of careful monitoring and reporting, PVA collected evidence of an elaborate public communications program designed by respondents to influence the 2016 election while evading federal election law. In its role overseeing federal elections, the FEC has a duty to ensure transparency so that American voters can make fully informed decisions. By puppeteering third-party groups, Hillary for America, the DNC, and Democracy Partners concealed the real actors behind their messaging as well as their funding. Because this constitutes violations of the FEC’s coordinated communications provisions as well as other areas of FECA, an investigation into this matter is warranted.

Dated: 3/29/17



Benjamin Barr  
Counsel  
Project Veritas Action Fund  
1214 E Boston Post Rd.  
Mamaroneck, NY 10543